

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/082,958 Confirmation No.: 5005
Appellants : David C. Loda
Filed : February 26, 2002
TC/A.U. : 2144
Examiner : Bengzon, Greg C.

Docket No. : PA-085.10645-US-U(02-179)
Customer No. : 34704

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

APPEAL BRIEF

Dear Sir:

This is an Appeal to the Board of Patent Appeals and Interferences from the Final Rejection of claims 1 - 4, 6 - 8, and 10 - 19, made by the Primary Examiner in Tech Center/Art Unit 2144, dated October 1, 2008.

REAL PARTY IN INTEREST

The real party in interest is the United Technologies Corporation.

RELATED APPEALS AND INTERFERENCES

In Appellant's opinion, there are no other appeals or interferences known to Appellant or Appellant's legal representative which will directly affect or be directly affected by or have a bearing on the Board of Appeals decision in the instant appeal.

For the sake of completeness however, this case was involved in Appeal 2007-3002. The Board issued a decision in

that Appeal on January 3, 2008. A copy of the Board's decision is attached hereto in Appendix C.

STATUS OF CLAIMS

Claims 1 - 4, 6 - 8, and 10 - 19 are rejected and are on appeal. A true copy of the claims on appeal is attached hereto in Appendix A.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the Examiner's final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

As set forth in claim 1, an integrated system (10) (see the Figure) comprises a portal (12) having at least one software tool for analyzing, organizing, and sorting at least one form of data for access by at least one community of users, each community having secured access to at least one form of data relevant to said community (see page 6, lines 11 - 27 of the specification; also see the Figure); a server (22) (see the Figure) communicating with said portal; at least one wireless local area network (24) in communication with said server (see page 4, lines 9 - 11 of the specification; also see the Figure); at least one mobile device (26) in wireless communication with said at least one wireless local area network (see page 4, lines 25 - 26; also see the Figure); a visual data device (32) in communication with said at least one mobile device (see page 4, lines 32 - 33 of the specification; also see the Figure); and a means for enabling two-way communication between said portal and said server (see page 5, line 29 to page 6, line 5 of the

specification), wherein said at least one mobile device comprises a PC tablet (see page 4, lines 28 -29 of the specification).

As set forth in dependent claim 2, the portal (12) may be accessed by at least one mobile device in communication with said portal (see page 7, lines 1 - 10 of the specification).

As set forth in dependent claim 3, the at least one local area network is physically integrated with said server (see page 4, lines 16 - 17 of the specification).

As set forth in dependent claim 4, the at least one local area network is in wireless communication with said server (see page 4, lines 10 - 16 of the specification).

As set forth in dependent claim 6, the visual data device comprises a borescope (see page 4, last line to page 5, line 1 of the specification).

As set forth in dependent claim 7, the borescope communicates with said mobile device via a data feed wire (30) (see page 5, lines 5 - 7 of the specification; also see the Figure).

As set forth in dependent claim 8, the mobile device comprises at least one USB port (28) for receiving said data feed wire (see page 5, lines 9 - 10 of the specification; also see the Figure).

As set forth in claim 10, which depends from claim 19, the integrated system includes a stereographic viewing system which comprises a stereo image lens in communication with said at

least one mobile device (see page 5, lines 1 - 3 of the specification).

As set forth in claim 11, which depends from claim 10, the at least one mobile device comprises at least one USB port for receiving data from said stereo image lens (see page 5, lines 1 - 10 of the specification; also see the Figure).

As set forth in claim 12, which depends from claim 1, the server is addressable by a unique IP address (see page 3, lines 25 - 29 of the specification; also see page 8, lines 4 - 6 of the specification) and the server hosts at least one web page (see page 5, lines 18 - 20 of the specification).

As set forth in claim 13, which depends from claim 1, the server is located on said at least one movable platform comprising one of the following: a boat, an airplane, a spacecraft, an automobile or a truck (see page 4, lines 5 - 7 of the specification).

Independent claim 14 is directed to a method for providing remote, interactive visual analysis of an apparatus, comprising the steps of: providing a portal (12) having at least one software tool for analyzing, organizing and sorting visual data for access by at least one community of users (see page 2, lines 28 - 29 of the specification; also see page 6, lines 11 - 27 of the specification; also see the Figure), said portal in communication with at least one electronic device (32) (see page 2, lines 29 - 30 of the specification); providing a server (22) in two-way communication with said portal via the Internet (see page 2, lines 31 - 32 of the specification); integrating said server into a wireless local area network (24) (see page 2, lines 32 - 33 of the specification); connecting at least one mobile

device (26) to said local area network (see page 2, last line to page 3, line 1 of the specification); providing said visual data from at least one visual device (32) to said at least one mobile device (see page 2, lines 1 - 2 of the specification); receiving said visual data at said at least one electronic device (see page 2, lines 3 - 4 of the specification); accessing securely via said server said visual data relevant to each of said at least one community of users (see page 6, last four lines of the specification); and analyzing a turbine engine of the apparatus using said visual data (see page 10, lines 16 - 19 of the specification).

As set forth in dependent claim 15, the method comprises the additional step of issuing control commands to said at least one visual device from said at least one electronic device (see page 7, lines 16 - 20 of the specification; also see page 9, lines 11 - 25 of the specification).

As set forth in dependent claim 16, which depends from claim 15, the control commands are issued in response to receiving said visual data by said at least one electronic device (see page 7, lines 16 - 20 of the specification; also see page 9, lines 11 - 25 of the specification).

As set forth in dependent claim 17, the method further comprises altering an orientation of said visual device in accordance with said control commands (see page 9, lines 11 - 25 of the specification).

As set forth in dependent claim 18, the receiving of said visual data is limited by a community affiliation of said one or more electronic devices (see page 6, lines 22 - 27 of the specification).

As set forth in claim 19, which depends from claim 1, the visual data device comprises a stereographic viewing system (see page 5, lines 1 - 3 of the specification).

GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL

There are two pending rejection(s) of claims 1 - 4, 6 - 8, and 10 - 19, all of which are being appealed, as set forth below.

- (1) Claims 1 - 4, 6 - 8, 10 - 12, and 14 - 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Charles (U.S. Patent No. 6,449,103) in view of Pugliese et al. (U.S. Publication No. 20010044751) and further in view of Thompson (U.S. Patent No. 7,068,301); and
- (2) Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Charles (U.S. Patent No. 6,449,103) in view of Pugliese et al. (U.S. Publication No. 20010044751) further in view of Thompson (U.S. Patent No. 7,068,301) and further in view of Boykin (U.S. Patent No. 6,831,556).

ARGUMENTS

I. CLAIM 1 IS ALLOWABLE OVER THE COMBINATION OF U.S.P.N. 6,449,103 TO CHARLES IN VIEW OF U.S. PUBL. NO. 20010044751 TO PUGLIESE

The Examiner has the burden of establishing a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993). Obviousness requires a suggestion of all elements in a claim (*CMFT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d

1333, 1342 (Fed. Cir. 2003) and “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in a way the claimed new invention does.” See *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007); also see *Ex parte Alexander*, 86 USPQ2d 1120, 1121 (BPAI 2007). As stated in *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

An obviousness determination also requires that a skilled artisan would have perceived a reasonable expectation of success. See *In re O’Farrell*, 853 F.2d 894, 903 - 04 (Fed. Cir. 1988). However to have a reasonable expectation of success, one must do more than merely vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result. The prior art fails to provide the requisite reasonable expectation of success where it merely teaches to pursue a general approach that seems to be a promising field of experimentation, and where the prior art gives only general guidance as to the particular form of the claimed invention or how to achieve it. *Id.* The expectation of success must be founded in the prior art, not in the applicant’s disclosure. See *In re Dow Chem. Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988).

An obviousness rejection may not be based on speculation, conjecture, or surmise. See *In re Sporck*, 301 F.2d 686, 690 (CCPA 1962); also see *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“where the legal conclusion [of obviousness] is not supported by facts, it cannot stand.”) Thus, assumptions as to common sense or what is known in the art cannot substitute for evidence thereof. See *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002); also see *In re Zurko*, 258 F.3d 1379, 1383, 1385 (Fed.

Cir. 2001).

Obviousness is not about what could be done. Obviousness is about what facts exist that would have prompted an artisan in the field to combine the elements in the way that the claimed new invention does. See *KSR*, 127 S.Ct. at 1741.

Like obviousness, whether a prior art reference is analogous art is a question of fact. See *Jurgens v. McKasy*, 927 F.2d 1552, 1558 (Fed. Cir. 1991). Two criteria have evolved for answering the question of whether a reference is analogous art. They are: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. See *In re Clay*, 966 F.2d 656, 658 - 59 (Fed. Cir. 1992).

The rejection of claim 1 on obviousness grounds fails for a number of reasons. Claim 1 is directed to an integrated system comprising: a portal having at least one software tool for analyzing, organizing and sorting at least one form of data for access by at least one community of users, each community having secured access to at least one form of data relevant to said community; a server communicating with said portal; at least one wireless local area network in communication with said server; at least one mobile device in wireless communication with said at least one wireless local area network; a visual data device in communication with said at least one mobile device; and a means for enabling two-way communications between said portal and said server, wherein said at least one mobile device comprises a PC tablet.

A review of the rejection of claim 1 shows that the Examiner is principally relying upon Figures 177 - 180 and the description attendant thereto of the Charles patent as the foundation of the rejection. However, a review of the written disclosure in Charles shows that Charles does not describe in writing each of the elements set forth in Figures 177 - 180 and such elements are connected. Due to the lack of any enabling written description, the Examiner's interpretation of Figures 177 - 180 of Charles and the relationship of the elements depicted therein on page 4 of the final rejection is just that - the Examiner's interpretation. The Examiner's interpretation is nothing more than the type of impermissible conjecture, speculation, and surmise upon which an obviousness rejection may not be based. It is not the type of facts required to support the legal conclusion of obviousness. For this reason alone, the rejection of claim 1 fails.

The Examiner contends that item 178L in Figure 178 of Charles is a portal; however, there is no way from merely viewing the figure to tell precisely what item 178L is. There is absolutely no writing in Charles which describes what item 178L is. Thus, the Examiner's contention is nothing more than impermissible conjecture.

The Examiner further contends that Charles has at least one wireless local area network in communication with a server (item 179e). As best seen in Figure 179, item 179e seems to be a depiction of a computer. While a server may be a computer, not every computer is a server. The computer on which this Brief is being written is an example of a non-server computer. There is nothing in Charles which describes computer 179e as being a server. Nor is there any disclosure in Charles of computer 179e being attached to at least one wireless local area network. While there is a local area network shown in Figure 179, there

is nothing in Charles which says that it is a wireless local area network or that the wireless local area network is connected to a server. As can be seen from Figure 179, the computer 179e is connected to many things; however, there is no description of what these things are.

The Examiner contends that Charles discloses at least one mobile platform in wireless communication with said at least one wireless local area network. While items 179t and 179r appear to be mobile platforms, there is no written description of either being in wireless communication with any wireless local area network, particularly a wireless local area network attached to a server or the computer 179e. The principal error here is that the Examiner is merely interpreting the figure in a way which supports a rejection; however, there is nothing written in Charles which confirms that the Examiner's interpretation is correct or fact. Thus, the Examiner's interpretation is nothing more than impermissible conjecture.

The Examiner clearly says on page 4 of the final rejection that he is interpreting the portal to be a computer that is enabled to view visual data via a web site concurrently with a web-based community of users. It is submitted that such an interpretation finds no support in Charles (no written description to confirm that the Examiner's position is correct). Thus, this can not form the basis for an obviousness rejection since it is nothing more than impermissible conjecture, speculation, and surmise. The Examiner's interpretation is not the type of facts needed for an obviousness conclusion.

The Examiner says that Charles, in column 60, lines 1 - 15, discloses a portal embodied by a computer connected to the Internet for presenting visual data to the user(s). This section of Charles says no such thing. Lines 1 - 15 of column 60 are merely a list of articles that may be used in Charles'

optical system. There is no disclosure of any item being a portal embodied by a computer or that the computer is even connected to the Internet for presenting visual data to user(s). As noted before, there is nothing in Charles which describes how the articles shown in Figures 177 - 180 are interconnected and used.

The Examiner acknowledges that Charles lacks a visual data device in communication with said at least one mobile device, which at least one mobile device is a PC tablet; and a means for enabling two-way communications between said portal and said server.

The Examiner, in the paragraph bridging pages 4 and 5 of the office action, says that Charles would have been motivated to look for other disclosures regarding remote viewing and observing of subject matter via the Internet. Nowhere does the Examiner say why Charles would have been so motivated given the fact that Charles already knew about remote viewing and the Internet as evidenced by the Charles patent.

The Examiner cites the Pugliese reference as disclosing a server communicating with a portal and a means for enabling two-way communications between said portal and said server. The Examiner further contends that Pugliese discloses having at least one software tool for analyzing, organizing, and sorting at least one form of data for access by at least one community of users, each community having secured access to at least one form of data relevant to the community.

The Examiner acknowledges that Pugliese discloses an online shopping portal that allows registered users and merchants to communicate via an interactive video communication system via website and that Pugliese users being able to remotely operate the video camera in order to view products from the merchant store. The Examiner, influenced by the Board's prior decision,

then erroneously concludes that Charles and Pugliese are analogous art.

In the decision rendered January 3, 2008, the Board determined that Charles and Pugliese are analogous art because both are broadly directed to systems and methods for gathering visual data over a network. Appellant submits that the Board erred in reaching its conclusion because the Board failed to realize that Charles has nothing to do with what is being claimed and what Appellant's invention is. As can be seen from the above discussion, there is no disclosure in Charles of many of the elements that form Appellant's invention - no server, no portal, no wireless local area network, etc. Thus, while Charles may broadly disclose a system for displaying images, it does so in a way which is quite different from the way that Appellant displays data. It can not realistically be said that Charles and Appellant's invention are in the same field of endeavor.

The Board's prior determination and the Examiner's conclusion is further erroneous because Pugliese has to do with online shopping where a shopper can enter a portal, view a product, and have a live interactive question and answer session with a vendor of the product who acts as a retail salesperson. See the Abstract of Pugliese. Certainly, both Appellant's claimed invention, and Charles, have nothing to do with online shopping. Thus, Pugliese is simply from a different field of endeavor than Appellant's invention and Charles, albeit related to a display of visual images. With regard to the second prong of the test, it can not be said that the reference is reasonably pertinent to the particular problem with which the inventor is involved. In its earlier decision, the Board erred because the Board concluded that Charles and Pugliese are both relevant to the problem of "viewing and observing subject matter via the

Internet". Missing from the Board's analysis is any mention of the problem that Appellant (the inventor) is concerned with. In the case on appeal, Appellant (the inventor) is concerned with the problem of providing remote access to data about an article such as an engine on an airplane to selected users of the integrated system. The inventor is not concerned with having a live interaction between a user of the system and a salesperson. Even if the Board's analysis was correct, there is nothing in Charles which suggests that Charles is not interested with having a live interaction between a user of the system and a salesperson. Charles is primarily interested in non-interactively displaying a three dimensional image of an object to a person using a variety of cameras and sitting in a home or theater setting.

The best example that Charles and Pugliese are non-analogous art can be found on page 5 of the Board's decision where the Board finds that the mobile device in Pugliese is a hinged video camera. In applying Charles, the Examiner finds elements 179r and 179t to be the claimed mobile devices. Neither one of these elements is disclosed as being a movable camera. In fact, it is clear from the depiction that they are both movable vehicles. By broadly characterizing the disclosure of Charles and Pugliese, one is led to erroneously combine disparate elements from the references in an attempt to meet the claim limitations.

Appellant submits that Pugliese is non-analogous art and one of ordinary skill in the art would not combine it with Charles. Common experience tells one that there are a myriad of ways to display visual images over the Internet which do not include live interaction between a user of the image display system and a salesperson. The motivation to combine must come references must come from the prior art, not from Appellant's

disclosure. Given the disclosure in Charles, one of ordinary skill in the art would not combine Pugliese with Charles because Charles has no portal and no server and has no interest in a live interchange between a user and a salesperson. Since Charles has no portal and no server, there is no reason to provide any means for enabling two way communication between a portal and a server. The mere fact that elements may exist in the prior art does not make it obvious to combine them with other elements. What is required is a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in a way the claimed new invention does." See KSR, 127 S.Ct. at 1741. The rejection does not present any reason that would have prompted a person of skill in the art to combine these elements. Obviousness is about what facts exist that would have prompted an artisan in the field to combine the elements in the way that the claimed new invention does. Id. Appellant submits that there is no set of facts that would have prompted an artisan to combine the elements of Pugliese with the elements of Charles. As disclosed in Charles, a user of the Charles system is sitting passively to view a three dimensional image. Even if a user would want to hold interactive sessions with and obtain input from knowledgeable experts at other remote sites, Charles does not disclose having such experts. Thus, the reason for combining the references is not based on facts.

In affirming the prior rejection based on Charles and Pugliese, the Board erroneously bases its decision on the statement that there are only a finite number of predictable solutions. There is no evidence presented by the Examiner of there being only a finite number of predictable solutions. The fact of the matter is that there are a myriad of solutions to presenting information over the Internet. Why one would select Pugliese is not clear to Appellant, given the fact that Charles

does not disclose that he wants to have live, interactive sessions when his images are displayed.

With regard to the limitation, the portal having at least one software tool for analyzing, organizing, and sorting at least one form of data for access by at least one community of users, Appellant submits that there is no reason to provide Charles's system with such a portal. Charles' system relates to a wide angle optical system providing means for the simultaneous and seamless imaging of the entire great circle perpendicular to its optical axis. The system may be associated with or incorporated into a film camera, an electronic camera, electronic sensor, projector, medical instrument, surveillance system, robotic system, flight command and control system, simulator, or similar article. The invention also relates to the distribution of still or motion picture image elements by optical or electronic means, whereby the image or any subset thereof is converted to or from a two dimensional annular or circular polar coordinate image or a segment thereof and a horizontal format rectangular or Cartesian coordinate image or a subset thereof. Charles also relates to the capture, integration, and display of images having three dimensional information and to other characteristics of real or artificially generated subject matter which may include temperature, sound, odor, and wind. Given the fact that Charles invention is directed to the display of three dimensional images, the Examiner has not explained why Charles would want a portal having the claimed software tool. It seems to Appellant that if Charles would want such a software tool in the system for processing the images and not in some portal. The tool would serve no purpose in a portal in Charles' system. The mere fact that something may exist in the prior art does not automatically lead one to the legal conclusion of obviousness. More is

required. There must be an articulated line of reasoning containing a rational underpinning which would lead one to the legal conclusion of obviousness. It is submitted that the Examiner has not provided the required line of reasoning. The Examiner merely says that one would combine Pugliese with Charles so that users at a remote site *may* be able to hold interactive sessions with and obtain input from knowledgeable experts at other remote sites. There is no explanation as to how the claimed software tool would accomplish this. One does not need the claimed software tool to hold interactive sessions and obtain input from knowledgeable experts at other remote sites. Nor is there any articulated line of reasoning which would lead one of ordinary skill in the art that the software tool enables one to manage an Internet website and allow users to remote operate the visual device by issuing commands via a website. Thus, the obviousness rejection fails because the Examiner has not made out a *prima facie* case of obviousness.

It should be noted that even if combined, Pugliese does not cure all of the aforementioned defects in Charles.

The Examiner cites Thompson for its showing of a PC tablet. However, the Examiner erroneously combines it with Pugliese and Charles. Once again, Charles is concerned with providing a three dimensional display of an object to a user sitting in a theater or home setting. Thompson has to do with a system for receiving and displaying maintenance information. Thompson discloses that the maintenance apparatus 20 may be connected to a scope positioned within an engine. Thus, while Thompson discloses a PC tablet attached to a visual device; there is no disclosure in Thompson of the visual device communicating with at least one mobile platform which is wirelessly connected with

a local area network which is in turn connected to a server.

With regard to combining Thompson with Charles, Appellant submits that there is no reason to do so. Charles is not inspecting an engine or providing information to users about an engine. While Thompson is pertinent to Appellant's invention, it is not pertinent to Charles' system. Even if one were to combine Thompson with Charles, it too does not cure the aforementioned deficiencies of Charles, alone, or taken in combination with Pugliese. Still further, there is nothing in the cited references which would lead one to combine the visual device connected to the PC tablet to at least one mobile platform.

It is submitted that the Examiner has impermissibly interpreted the primary reference to Charles which by itself renders the obvious rejection fatally flawed. As noted above, an obviousness rejection may not be based on speculation or conjecture. See *Sporck*, 301 F.2d at 690. Further, the Examiner has done nothing more than find certain claimed elements in the prior art. Appellant submits that there is no set of *facts* (emphasis added) proffered by the Examiner which would lead one to conclude that an artisan would combine the elements in the manner that the inventor has combined them. The rejection is nothing more than an impermissible hindsight rejection.

Thus, claim 1 is allowable over the combination of Charles, Pugliese, and Thompson.

II. CLAIM 14 IS ALLOWABLE OVER THE COMBINATION OF U.S.P.N. 6,449,103 TO CHARLES IN VIEW OF U.S. PUBL. NO. 20010044751 TO PUGLIESE

Independent claim 14 is directed to a method for providing remote, interactive visual analysis of an apparatus, comprising the steps of: providing a portal having at least one software tool for analyzing, organizing and sorting visual data for access by at least one community of users, said portal in communication with at least one electronic device; providing a server in two-way communication with said portal via the internet; integrating said server into a wireless local area network; connecting at least one mobile device to said local area network; providing said visual data from at least one visual device to said at least one mobile device; receiving said visual data at said at least one electronic device; accessing securely via said server said visual data relevant to each of said at least one community of users; and analyzing turbine engine of the apparatus using said visual data.

Claim 14 is allowable for essentially the same reasons as claim 1. As noted above, there is no portal in Charles. Thus, Charles does not perform the step of providing a portal having at least one software tool for analyzing, organizing and sorting visual data for access by at least one community of users, said portal in communication with at least one electronic device. As noted above, the Examiner impermissibly conjectures or speculates that item 179l is a portal. Still further, Charles lacks a server. As mentioned above, there is no written disclosure in Charles that the computer 179e is a server. Thus, Charles does not perform the method steps of providing a server in two-way communication with said portal via the internet; and integrating said server into a wireless local area network. Still further, Charles does not perform the method steps of accessing securely via said server said visual data relevant to each of said at least one community of users; and analyzing turbine engine of the apparatus using said visual data. Since

there is no server in Charles, one cannot access any visual data relevant to each of said at least one community of users. Charles has no reason to analyze a turbine engine using any visual data.

As noted above, Pugliese is non-analogous art and therefore one of ordinary skill in the art would not combine the references. Even if Pugliese were somehow combined with Charles, it would not cure the aforementioned deficiencies of Charles. There is no reason to provide Charles with a portal and/or a server because Charles does not need them to accomplish its objectives. Pugliese also does not analyze a turbine engine of an apparatus using visual data. Pugliese is an on-line shopping system which allows a user to speak with a salesperson. There is no disclosure of using the system to present data on turbine engines.

Thompson teaches the use of a maintenance apparatus to analyze a gas turbine engine. However, Thompson lacks a portal and/or a server. Further, there is no reason to combine Thompson with Charles and/or Pugliese.

With respect to the rejection of claim 14 on pages 9 and 10 of the final rejection, the Examiner merely states what is allegedly shown in each reference. There is no articulated line of reasoning having a rational underpinning as to why one of ordinary skill in the art would combine the reference in the manner in which the Examiner combines them. Thus, the Examiner has failed to present all the elements needed to make a *prima facie* case of obviousness with regard to the method of claim 14. In other words, there is no articulated line of reasoning having a rational underpinning presented which outlines why one of ordinary skill in the art would perform each of the method steps set forth in claim 14.

III. CLAIMS 2 - 4, 6 - 8, 10 - 12, and 15 - 19 ARE ALLOWABLE
OVER THE COMBINATION OF U.S.P.N. 6,449,103 TO CHARLES IN
VIEW OF U.S. PUBL. NO. 20010044751 TO PUGLIESE

Claims 2 - 4, 6 - 8, 10 - 12, and 15 - 19 at a minimum are allowable for the same reasons as their parent claims.

Claim 2 is directed to the portal being accessed by the at least one mobile device in communication with said portal. As noted above, Charles does not disclose a portal. Even if Charles were modified to include a portal, there is nothing in any of the cited and applied references which discloses a portal which is accessed by the at least one mobile device (elements 179r or 179t). Figure 180 of Charles has an item 180a, but there is no written disclosure in Charles of what it is. Column 58, lines 15 - 36 does not disclose what item 180a is. Thus, the rejection of claim 2 is nothing more than impermissible speculation on the part of the Examiner. Further, the Examiner has not put forth any line of reasoning having a rational underpinning as to why one of ordinary skill in the art would modify Charles to have such a feature.

Claim 3 is directed to the at least one local area network being physically integrated with said server. Since there is no server in Charles, any local area network can not be physically integrated with it. The Examiner on page 7 of the final rejection points to Figure 179c as showing this claimed feature. However, there is no identified server in Figure 179 and there is no written description in Charles of what element 179c is. Thus, the rejection is nothing more than impermissible speculation on the part of the Examiner. Further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have such a feature.

Claim 4 is directed to the at least one local area network being in wireless communication with the server. As noted above, there is no identified server in Charles. Column 16, lines 1 - 15 is the brief description of FIGS. 179 and 180 which states in pertinent part that FIG. 179 illustrates the optical system with image capture and distribution means which comprise the invention. There is a list of articles which may be used for image capture, distribution and display. Nowhere in this list is a server mentioned. Nor is there any discussion of at least one local area network being in wireless communication with a server. Thus, the Examiner's position on page 8 of the office action is nothing more than improper speculation which can not form the basis of an obviousness rejection. Further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have such a feature.

Claim 6 is directed to the visual data being a borescope. While Charles discloses the use of a borescope in connection with certain embodiments of his invention, there is no disclosure of the borescope forming the visual data being in communication with the at least one mobile device. Thus, Charles does not render the subject matter of claim 6 obvious. The Examiner has merely found a claimed element to be in the prior art, albeit used in a completely different manner.

Claim 7 is directed to the borescope communicating with the mobile device via a data feed wire. While Charles discloses the use of a borescope, there is no disclosure of the borescope communicating with at least one mobile device via a data feed wire. The Examiner does not point out where in Figure 64 and Figure 180, such a feature can be found. Column 45, lines 55 - 60 mentions a borescope, but does not place the borescope in communication with a mobile device. There is also no mention of a data feed wire. In column 47, lines 20 - 30, there is

absolutely no mention of a borescope, a mobile device, or a data feed wire being used to allow communication between the borescope and the mobile device. It is submitted that the claimed subject matter cannot be found in Charles and thus Charles can not render it obvious. Still further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have the claimed features.

Claim 8 is directed to the mobile device comprising at least one USB port for receiving the data feed wire. It is allowable for the same reason as claim 7. None of the cited Figures has a mobile device with a USB port for receiving the data feed wire connected to the borescope. Similarly, there is no disclosure of the claimed subject matter in any of column 45, lines 55 - 60, column 46, lines 35 - 50, and column 47, lines 20 - 30. None of these sections contain any written description of the claimed subject matter. In fact, there is not even any mention of a USB port. The Examiner has not provided any statement as to how the cited portions of Charles renders the claimed subject matter obvious. Further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have such a feature. Thus, the Examiner has not made out a *prima facie* case of obviousness.

Claim 19 calls for the visual data device to comprise a stereographic viewing system and claim 10 calls for the stereographic viewing system to have a stereo image lens in communication with the at least one mobile device. Column 30, lines 10 - 15 of Charles says that a miniature version of the invention is applicable to articles such as medical instruments, dental instruments, bore sights, or scopes and has nothing to do with the subject matter set forth in claims 10 and 19. Column 47, lines 20 - 30 refers to Figs 140 - 146. There is no mention of a stereographic viewing system and/or a stereo image lens.

Column 54, lines 25 - 50 refers to Figs. 164 - 174. Here too, there is no mention of a stereographic viewing system and/or a stereo image lens. With regard to Figures 177 - 180, the Examiner does not point out where these claimed elements can be found in Figures 177 - 180. Thus, the Examiner has not made out a *prima facie* case of obviousness because the claimed elements can not be found where the Examiner says they are. The rejection fails because the Examiner is engaging in impermissible speculation and conjecture. Further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have such a feature. There is no articulated line of reasoning having a rational underpinning.

Claim 11 is allowable for the same reason as claim 10. Further, as discussed above, there is no disclosure of at least one mobile device comprising at least one USB port for receiving data from the stereo image lens. Figures 177 - 180 do not contain any such feature and the Examiner has not pointed out where these features can be found in said Figures. As for the cited portions, see the comments above. None of the cited portions disclose at least one mobile device comprising at least one USB port for receiving data from the stereo image lens. The words "USB port", "stereo image lens", and "mobile device" do not appear anywhere in the cited portions. Thus, the Examiner has not made out a *prima facie* case of obviousness because the claimed elements can not be found in the cited reference. The rejection fails because the Examiner is engaging in impermissible speculation and conjecture. Further, the Examiner has not put forth any reason why one of ordinary skill in the art would modify Charles to have such a feature. There is no articulated line of reasoning having a rational underpinning.

Claim 12 calls for the server to be addressable by a unique IP address and hosting at least one web page. Since Charles has

no server and there is no need for one in Charles, there is no reason to provide a server having a unique IP address and hosting at least one web page.

Claims 15 - 18 are allowable for the same reasons as their parent claim.

IV. CLAIM 13 IS ALLOWABLE OVER THE COMBINATION OF CHARLES, PUGLIESE, THOMPSON, AND U.S. PATENT 6,831,556 TO BOYKIN

Boykin does not cure the deficiencies of the combination of Charles, Pugliese, and Thompson. The rejection fails because there is no reason to provide Charles with a server and put it on a mobile platform. The Examiner says that one of ordinary skill in the art would make such a combination because it would enable an operator to control the video feed from the visual device. Quite frankly, the Examiner's statement of motivation makes no sense. It is not clear how Charles system would be improved by incorporating a server on a movable platform comprising a boat, an airplane, a spacecraft, an automobile or a truck and how incorporating the server on such a movable platform would enable an operator to control the video feed from the visual device. One has nothing to do with the other. An operator can control the video feed from the visual device without it being on a movable platform. Thus, the rejection fails because the Examiner has not set forth an articulated line of reasoning for combining the references which has a *rational underpinning*.

CONCLUSION

For the reasons set forth above, the Board is hereby requested to reverse the Examiner's rejection of claims 1 - 4, 6

- 8, and 10 - 19 and remand the application to the Primary Examiner for allowance and issue.

APPEAL BRIEF AND EXTENSION OF TIME FEES

A request for a two month extension of time is enclosed herewith. The Director is hereby authorized to charge the extension of time fee of \$490.00 to Deposit Account No. 02-0184.

The Director is further authorized to charge Deposit Account No. 21-0279 in the amount of \$540.00 to cover the Appeal Brief fee.

If the Director determines that any additional fees are due, he is hereby authorized to charge said fees to said Deposit Account No. 21-0279.

Respectfully submitted,

DAVID C. LODA

By /Barry L. Kelmachter #29999/
Barry L. Kelmachter
Attorney for Appellant
Reg. No. 29,999
Tel. (203) 777-6628 x. 112
Fax. (203) 865-0297
Email: docket@bachlap.com

Date: May 4, 2009

APPENDIX A - CLAIMS ON APPEAL

1. An integrated system comprising:

a portal having at least one software tool for analyzing, organizing and sorting at least one form of data for access by at least one community of users, each community having secured access to at least one form of data relevant to said community;

a server communicating with said portal;

at least one wireless local area network in communication with said server;

at least one mobile device in wireless communication with said at least one wireless local area network;

a visual data device in communication with said at least one mobile device; and

a means for enabling two-way communications between said portal and said server, wherein said at least one mobile device comprises a PC tablet.

2. The integrated system of claim 1, wherein said portal may be accessed by at least one mobile device in communication with said portal.

3. The integrated system of claim 1, wherein said at least one local area network is physically integrated with said server.

4. The integrated system of claim 1, wherein said at least one local area network is in wireless communication with said server.

6. The integrated system of claim 1, wherein said visual data device comprises a borescope.

7. The integrated system of claim 6, wherein said borescope communicates with said mobile device via a data feed wire.

8. The integrated system of claim 7, wherein said mobile device comprises at least one USB port for receiving said data feed wire.

10. The integrated system of claim 19, wherein said stereographic viewing system comprises a stereo image lens in communication with said at least one mobile device.

11. The integrated system of claim 10, wherein said at least one mobile device comprises at least one USB port for receiving data from said stereo image lens.

12. The integrated system of claim 1, wherein said server is addressable by a unique IP address and wherein said server hosts at least one web page.

13. The integrated system of claim 1, wherein said server is located on said at least one movable platform comprising one of the following: a boat, an airplane, a spacecraft, an automobile or a truck.

14. A method for providing remote, interactive visual analysis of an apparatus, comprising the steps of:

providing a portal having at least one software tool for analyzing, organizing and sorting visual data for access by at

least one community of users, said portal in communication with at least one electronic device;

providing a server in two-way communication with said portal via the internet;

integrating said server into a wireless local area network;

connecting at least one mobile device to said local area network;

providing said visual data from at least one visual device to said at least one mobile device;

receiving said visual data at said at least one electronic device;

accessing securely via said server said visual data relevant to each of said at least one community of users; and

analyzing a turbine engine of the apparatus using said visual data.

15. The method of claim 14, comprising the additional step of issuing control commands to said at least one visual device from said at least one electronic device.

16. The method of claim 15, wherein said control commands are issued in response to receiving said visual data by said at least one electronic device.

17. The method of claim 16, further comprising altering an orientation of said visual device in accordance with said control commands.

18. The method of claim 14, wherein said receiving of said visual data is limited by a community affiliation of said one or more electronic devices.

19. The integrated system of claim 9, wherein said visual data device comprises a stereographic viewing system.

APPENDIX B - EVIDENCE

NOT APPLICABLE

APPENDIX C - RELATED PROCEEDINGS

Board Decision dated January 3, 2008 (copy attached)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID C. LODA

Appeal 2007-3002
Application 10/082,958
Technology Center 2100

Decided: January 3, 2008

Resp. Due 3-3-08 (final date)

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1-19. We have jurisdiction under 35 U.S.C.
§ 6(b). We affirm.

A. INVENTION

The invention at issue involves monitoring a product and providing data about the product to a user (Spec. 1). In particular, a system gathers visual information of a product and disseminates the data to interested parties (*id.* 3). The information may be transmitted via a server in a wireless LAN (*id.* 4, Fig. 1).

B. ILLUSTRATIVE CLAIMS

Claim 1, which further illustrates the invention, follows:

1. An integrated system comprising:
 - a portal;
 - a server communicating with said portal;
 - at least one wireless local area network in communication with said server;
 - at least one mobile device in wireless communication with said at least one wireless local area network; and
 - a means for enabling two-way communications between said portal and said server.

C. REJECTION

Claim 13 stands rejected under 35 U.S.C. § 112, 2d paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. Claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,449,103 (“Charles”), in view of U.S. Publication No. 2001/0044751 (“Pugliese”).

II. CLAIM GROUPING

“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii) (2005).¹

Appellant argues claims 1-19 as a group (App Br. 7-10). We select claim 1 as the sole claim on which to decide the appeal of the group. Appellant argues indefiniteness of claim 13 separately.

III. ISSUES

A. INDEFINITENESS

Appellant disputes the Examiner’s rejection of claim 13 and asserts that claim 13 “reasonably apprises one of ordinary skill in the art both the utilization and scope of the invention as precisely as the subject matter permits.” (App. Br. 6).

We affirm the Examiner’s rejection of claim 13 under 35 U.S.C. § 112, 2d paragraph. “A claim is indefinite when it contains words or phrases whose meaning is unclear.” (MPEP § 2173.05(e)). Claim 13 recites “said at least one movable platform.” However, the claim contains no

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

earlier recitation or limitation of the movable platform. “[W]here the claim contains no earlier recitation or limitation of a [recited claim element] and where it would be unclear as to what element the limitation was making reference,” a lack of clarity of the claim arises. (*Id.*) In this case, we find that although claim 13 recites “said . . . movable platform,” the lack of an earlier recitation of the movable platform renders the claim indefinite because it is unclear to what element “said . . . movable platform” refers.

We affirm the rejection of claim 13 under 35 U.S.C. § 112, 2d paragraph because Appellant has failed to demonstrate the Examiner erred in rejecting claim 13.

B. OBVIOUSNESS

As set forth above, we select claim 1 as the sole claim on which to decide the appeal of claims 1-19. Appellant disputes the Examiner’s conclusion of obviousness of claim 1 and argues that Pugliese fails to disclose “at least one mobile device” (App. Br. 8). The Examiner finds that “Charles fully disclosed ‘*at least one mobile device*’ (Charles – Figure 178, Figure 179, Items 179t, 179r, Column 59 Lines 5-25, Column 60 Lines 1-15) . . . (Charles – Figure 64, Figure 180, Column 45 Lines 55-60, Column 46 Lines 35-50, Column 47 Lines 20-30).” (Ans. 13).

We agree with the Examiner that Charles discloses a mobile device. The Specification, while disclosing an example of a mobile device such as a wireless PC tablet (Spec. 4), fails to provide an express definition of the claim term “mobile device.” “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). We

apply a standard definition of “mobile device” to encompass any device that is movable. We find that devices in the Charles reference cited by the Examiner include devices that are movable. For example, Charles discloses “any size camera, laparoscopic surgical or observation instrument, endoscope, sigmoidoscope, bore scope, projector, . . .” (col. 59, ll. 10-12). We find that a mobile or movable device encompasses any of these devices and that the movable devices disclosed by Charles constitute “mobile devices.”

In addition, Pugliese discloses “one or more hinged video cameras and associated motors . . . movable to view items within a 360-degree arc and hinged to move vertically.” (Para. [0384]). We find that the video camera of Pugliese is movable and therefore constitutes a “mobile device.”

Appellant further argues that “the Examiner’s motivation to combine Charles in view of Pugliese is erroneous as Charles and Pugliese are not analogous art” (App. Br. 8). The Examiner finds that Charles discloses “distribution and display of video data” and that Pugliese discloses remote viewing of subject matter via the Internet (Ans. 15). The Examiner further states that “Charles would have been motivated to implement the teachings of Pugliese in order to facilitate viewing and observing subject matter via the Internet.” (*Id.*)

“In order to rely on a reference as a basis for rejection of the applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). *See also In re Deminski*, 796 F.2d 436 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992) (“A reference is

reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.”); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

We find based on the record before us that the field of Appellant's endeavor includes gathering of visual data and transmitting the visual data over a network. Charles discloses systems and methods for gathering visual data and providing the data to a user. Charles is in the field of Appellant's endeavor because Charles discloses gathering visual data, as does Appellant's invention. The Examiner finds that Pugliese discloses providing visual data of subject matter over the Internet. (Ans. 15). Pugliese is also in the field of Appellant's endeavor because Pugliese also discloses providing visual data to a user. In addition, the Examiner finds that Charles and Pugliese are both relevant to the problem of “viewing and observing subject matter via the Internet.” (Ans. 15). We agree with the Examiner that both Charles and Pugliese are “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue because both are relevant to Appellant's field of endeavor (gathering visual data and providing the data to a user over a network).

Appellant further argues that “Charles does not teach anything truly meaningful with which to provide the requisite motivation to effectively

combine with Pugliese . . .” (App. Br. 9) and that “Pugliese does not teach, suggest or motivate one of ordinary skill in the art to seek out the optical system taught by Charles.” (Id. 10). The Examiner states that one of ordinary skill in the art, given the Charles reference, would have looked “for other disclosures regarding remote viewing and observing of subject matter (Charles – Column 7 Lines 15-20, Lines 33-36) via Internet, such as Pugliese.” (Ans. 16).

As set forth above, Charles discloses optical systems for obtaining images (col. 6, ll. 53-63) using movable imaging devices (col. 59, ll. 10-12). Pugliese discloses obtaining video images through a movable camera (para. [0384]) and sharing the images over a network to “a group of viewers.” (Para. [0166]). One of ordinary skill in the art, given the method of obtaining images of Charles and a market need to provide images over a network would have a finite number of predictable solutions. In one predictable solution as disclosed by Pugliese, the images obtained by movable imaging devices of Charles are shared over a network to a group of viewers. “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007). In the present case, the combination of Charles and Pugliese would have resulted in a predictable solution that would have been within the technical grasp of one of ordinary skill in the art.

Hence, we agree with the Examiner that the combination of Charles and Pugliese would have been obvious to one of ordinary skill in the art.

Because Appellant has failed to demonstrate that the Examiner erred in rejecting claim 1, we affirm the rejection of claim 1 as being unpatentable over Charles in view of Pugliese, and of claims 2-19, which fall therewith.

IV. ORDER

In summary, the rejection of claim 13 under § 112, second paragraph and the rejection of claims 1-19 under § 103(a) are affirmed.

AFFIRMED

clj

BARRY L. KELMACHTER
BACHMAN & LAPOINTE, P.C.
SUITE 1201
900 CHAPEL STREET
NEW HAVEN, CT 06510-2802